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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,251	09/15/2003	Fung-jou Chen	KCC-14,105.4	2418

7590 09/13/2006

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EXAMINER

HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10-662-251

EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary

Application No.

10/662,251

Applicant(s)

CHEN ET AL.

Examiner

Laura C. Hill

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 29-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 29-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: Newly considered documents on the IDS dated 9-15-03.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments based on claim amendments, see pages 10-17 filed 15 June 2006, with respect to the rejection(s) of claim(s) 1-12, 14-17, and 29-39 under Sherrod et al. (US 4,973,325) and claim 13 over Sherrod in view of Oatley et al. (US 5,104,396) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bruemmer et al. (US 5,462,541) and Johnston et al. (US 6,372,954) as discussed below as necessitated by the amendment.

Election/Restriction

2. It is noted that claims 18-28 have been cancelled in the reply filed 9 January 2006.

Information Disclosure Statement

3. In response to Applicant's remarks (see pages 8-10), all information contained in the information disclosure statement (IDS) filed on 15 September 2003 has been considered including the Non-Patent Literature on pages 1, and 17-19 and the French patents on page 17 since a copy of these references was provided in the parent application 09/165,875 filed 2 October 1998.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 8-12, 14-15, 29-30 and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Bruemmer et al. (US 5,462,541; herein 'Bruemmer'). Regarding claims 1-2, 8, 12, 15, 36 Bruemmer discloses an absorbent diaper 10 (column 2, lines 38-30) comprising: an absorbent core 16 having an outer absorbent member 18 with a void 22 centrally disposed therein and a cleft block/central absorbent member 26 (column 6, lines 15-36) disposed over the centrally disposed outer absorbent shaping member void (column 2, lines 38-39, column 4, lines 52-54, column 5, lines 8-10 and lines 24-33, and figure 8); and a pledget/ liquid pervious wicking barrier 20 (column 5, lines 25-33) disposed between the outer member 18 and the central member 26 and having a vertical component and a horizontal component spanning a horizontal distance on the body side surface of the absorbent core 16, said wicking barrier 20 establishes a pathway for fluid flow from a center to an outer perimeter of central absorbent member 26 (column 5, lines 33-44, figure 8).

Regarding claims 9 and 37 Bruemmer further discloses additional layers 24 of wicking barrier material (column 6, lines 43-54, figure 8).

Regarding claims 10 and 38 Bruemmer further discloses a top sheet 12 having an opening 64 and folded portions 56 (column 3, lines 1-3, column 4, lines 18-23, figure 8).

Regarding claims 11 and 39 Bruemmer further discloses a plurality of vertically oriented liquid impervious/nonabsorbent layers 28, 30 (column 7, lines 25-32 and lines 55-60, figure 8).

Regarding claim 14 Bruemmer further discloses alternating layers of barrier material 20, absorbent layer 18, additional barrier wicking layer 24 (figure 8).

Regarding claim 16 Bruemmer inherently discloses the outer shaping member 18 has the thickness, edge width, and basis weight in the ranges claimed since The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Regarding claim 17 Bruemmer discloses the wicking barrier 20 has a horizontal component/width of about 5 centimeters (column 5, lines 33-35).

Regarding claims 29-30 Bruemmer discloses the article as discussed above with respect to claim 1. Bruemmer further discloses the absorbent core 16 is sandwiched between a top sheet 12 and a back sheet 16 (column 6, lines 54-56, figure 8).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 3-7 and 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruemmer et al. (US 5,462,541; herein 'Bruemmer') in view of Johnston et al. (US 6,372,954; herein 'Johnston'). Based upon the earlier effective U.S. filing date of the

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reference, Johnston constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Regarding claims 3, 5-6, 31, and 33-35 Bruemmer *does not expressly disclose* an apertured film wicking layer with a liquid permeability gradient and pore size in the range claimed. **Johnston** discloses an absorbent diaper 10 having an absorbent core 18 disposed between a permeable top sheet 14 and impermeable back sheet 16 (column 3, lines 31-37) and channels/apertures 22 on absorbent liquid management member 12 remote from the body side surface of the core for improved rapid spreading of liquids in a desired direction (column 3, lines 34-43, figures 1-2). Johnston further discloses two factors that influence the ability of liquid management members to transport urine and vaginal secretion fluids are the geometry of the surface such as

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shape of the channels and the nature of the film surface (column 3, lines 55-59). One would be motivated to modify the core of Bruemmer with the apertured film wicking layer having a liquid permeability gradient of Johnston for rapid liquid spreading in a desired direction since the references disclose absorbent cores having apertures for fluid distribution. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article, thus providing a wicking layer having an apertured film layer with a permeability gradient.

Regarding claims 4 and 32 Bruemmer does not expressly disclose the wicking barrier 20 comprises a spunbond web. The method of forming the device (e.g.: spunbond) is not germane to the issue of patentability of the device itself. Therefore, this limitation has been given little patentable weight. However, assuming this limitation "spunbond" is given patentable weight, it would be obvious that the wicking barrier of Bruemmer be made by any type of non-woven manufacturing process known to those of ordinary skill in the art since non-wovens of all types are known wicking materials.

Regarding claim 7 Bruemmer does not expressly disclose pore depth in the wicking layer. **Johnston** further discloses groove depth to be 5-3000 microns for enhanced wicking action (column 4, lines 9-21). One would be motivated to modify the core of Bruemmer with the groove depth of Johnston for rapid liquid spreading in a desired direction since the references disclose absorbent cores having apertures for fluid distribution. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article, thus providing a wicking layer with aperture depth in the claimed range.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bruemmer et al. (US 5,462,541; herein 'Bruemmer') in view of Oatley et al. (US 5,104,396; herein 'Oatley'). Bruemmer *does not expressly disclose* the absorbent member comprises at least one layer of absorbent material and at least one layer of barrier material wound together in a spiral wound composite. **Oatley** discloses an absorbent pad with a first wicking means in the fibrous layer adapted to conduct fluid outwardly from the central portion towards the periphery of the fibrous layer and a second wicking means in fluid conductivity with the first wicking means and adapted to conduct fluid from the first wicking means in a direction way from the first wicking means (column 1, lines 60-68). Oatley further discloses the helical path/spiral wound composite 38 is formed by absorbent fibrous layer 34 and impermeable backing sheet 32 (column 6, lines 27-45, figure 5). One would be motivated to modify the article of Bruemmer with the spiral wound composite of Oatley for improved fluid distribution since both references disclose wearable absorbent articles for lateral fluid wicking to outer

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peripheries of the absorbent members. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article, thus providing a spiral wound composite.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jackson et al. (US 4,576,596) is cited for showing a sanitary napkin with absorbent central member 12 disposed over a centrally disposed void in absorbent core 11.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137.

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The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

